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 Services, Inc., Angeles Chemical Company,
 Inc., and John Locke

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANGELES CHEMICAL COMPANY, INC.,
 et al.

Plaintiffs,

vs.

MCKESSON CORPORATION, a California
 Corporation, MCKESSON CHEMICAL
 COMPANY, FOREMOST-MCKESSON
 EXPORT CORPORATION, MORELAND-
 MCKESSON CHEMICAL COMPANY INC.,
 and DOES 1 through 500, Inclusive,

Defendants.

Northern District Miscellaneous Matter
 Case No. C 06-80343 Misc MMC (EDL)
 Case No. C 07-80123 Misc MMC (EDL)

Case No: 01-10532 TJH (Ex)
 Central District of California

PLAINTIFF ANGELES CHEMICAL
 COMPANY'S EVIDENTIARY
 OBJECTIONS TO SQUIRE SANDERS &
 DEMPSEY L.L.P.'S OPPOSITION TO
 MOTION TO COMPEL COMPLIANCE
 WITH THE MARCH 22, 2007 COURT
 ORDER

Date: June 6, 2007
 Time: 9:00 a.m.
 Room: Courtroom E, 15th Floor
 450 Golden Gate Ave
 San Francisco, CA
 Judge: Hon. Elizabeth D. Laporte

Plaintiffs Angeles Chemical Company, Greve Financial Services and John Locke
 ("Plaintiffs") hereby object to the Declarations of Maureen Bennett, Nicholas Unkovic and Diane
 Gibson, and the Attached Exhibits filed in Support of Squire Sanders, & Dempsey's ("SSD")
 Opposition to Angeles' Motion to Compel Compliance with the March 22, 2007 Court Order
 ("Order"), Case No. 07-80123 Docket No. 3, as follows:

Plaintiff Angeles' Evidentiary Objections to SSD's Opposition

Northern District Misc Matter
 Case No. C 06-80343 Misc MMC (EDL)
 Case No. C 07-80123 Misc MMC (EDL)

1 1. Declaration of Diane Gibson

2 a. Lacks Personal Knowledge

3 Inadmissible hearsay cannot substitute for personal knowledge, neither can statements
4 made on information and belief. See Washington Cent. R. Co., Inc. v. National Mediation Bd.,
5 830 F. Supp. 1343, 1352-53 (E.D. Wash. 1993); Sellers v. M.C. Floor Crafters, Inc., 842 F.2d
6 639, 643 (2nd Cir. 1988). Ms. Gibson does not and cannot demonstrate that she has personal
7 knowledge of nor the competency to testify to the facts contained therein. Instead, Ms. Gibson's
8 declaration is based entirely on hearsay, speculation and opinion, and attaches exhibits that are
9 not properly authenticated. Ms. Gibson cannot claim that she has personal knowledge of the facts
10 and statements that related to the documents listed on the Privilege Logs. Blount v. Conn. Gen.
11 Life Inc. Co., No. CV 01-1341-BR, 2002 WL 31974405, *3 (D. Or. 2002). An attorney has no
12 personal knowledge of and is not competent to testify to the authenticity of documents generated
13 before the litigation began or merely produced by his or her client. Ms. Gibson has no personal
14 knowledge of many statements contained within her declaration, and thus the entirety of the
15 declaration should be stricken and given no weight. Bank Melli Iran v. Pahlavi, 58 F.3d 1406,
16 1412-1413 (C.A. 1995); U.S. v. Dibble, 429 F.2d 598, 602 (C.A. 1970).

17 b. Contains Inadmissible Hearsay.

18 Ms. Gibson's declaration contains statements and attached Exhibit "F" is based on and or
19 contains one or more layers of inadmissible hearsay. Federal Rules of Evidence ("FED. R. EVID.
20 ") 801, 802, See McEuin v. Crown Equipment Corporation, 328 F.3d 1028, 1034-35 (9th Cir.
21 2003). For example, paragraph 16 Ms. Gibson attempts to state what the "Court's intention that
22 McKesson and Plaintiffs...should resolve...any disputes regarding the privileged nature of such
23 documents..." Gibson Declaration ¶ 16. This statement is hearsay and is wholly inadmissible.
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1 FED. R. EVID. 803. Additionally, Exhibit "F" contains one more more layers of inadmissible
2 hearsay, is improper argument and opinion, not evidence, lacks foundation of personal
3 knowledge, and should be excluded from evidence. FED. R. EVID. 803, 701, and 901.
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5 Ms. Gibson has not offered any arguments showing if this statement or Exhibit "F" fall
6 within an exception or exclusion of the hearsay rule and therefore they are inadmissible under
7 Fed. R. Evid. 801 and 802. See L.A. News Serv. V. CBS Broad., Inc., 305 F.3d 924 (9th Cir.
8 2002); Breneman v. Kennecott Corp., 799 F.2d 470, 473 (9th Cir. 1986). Accordingly, ¶ 16 and
9 Exhibit "F" are inadmissible and should be excluded.

10 c. Impermissibly Vague and Misleading
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12 The following statements and exhibits are vague and ambiguous, speculative, misleading,
13 argumentative, mischaracterize the evidence and/or assume facts not in evidence. Their probative
14 value, if any, is far outweighed by their prejudicial effect. FRCP 403, 602, See Trevino v. Gates,
15 99 F.3d 911, 922 (9th Cir. 1996). Therefore, paragraphs 6, 9, 11, 12, 14, 21, are objectionable and
16 inadmissible under Fed. R. Evid. 403, 602. Moreover, paragraph 21 is irrelevant and does not
17 tend to make the existence of any fact that is of consequence to the determination of this motion
18 more or less probable. Fed. R. Evid. 401, 402; See Hobson v. J.R. Watkins Co., 519 F.2d 869,
19 870 (9th Cir. 1962). Ms. Gibson describes Privilege Log Items 1, 13, 23, 31, 35, 49 and 50 even
20 though she admits these items are not part of this motion and are "not sought [by Plaintiffs] in this
21 motion." Gibson Declaration ¶ 21. Paragraph 21 is therefore inadmissible and should be stricken.
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23 d. Exhibit "I" is Irrelevant and Immaterial.
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25 The document attached as Exhibit "I" (Honorable Charles F. Eick, United States District
26 Court, Central District's Order, dated May 15, 2007) is irrelevant under Fed. R. Evid. Rule 401
27 and therefore not admissible. Only relevant evidence is admissible. U.S. v. Wright, 901 F.2d 68,
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70 (1990)(“irrelevant evidence of any kind is inadmissible by Rule 402”)(emphasis added). This evidence does not relate to this motion in any way, and does not tend to make the existence of any fact that is of consequence to the determination of this action more or less probable. Fed. R. Evid. 401, 402; See Hobson v. J.R. Watkins Co., 519 F.2d 869, 870 (9th Cir. 1962). This is a blatant attempt by SSD to mislead and distract the Court. This evidence is totally irrelevant to SSD’s obligation to comply with the Court’s March 22, 2007 Order. SSD admittedly cannot even argue with certainty the value of this evidence, as SSD admits that “*some of these issues may already have been resolved by the Central District Court.*” Therefore, it is also inadmissible under Fed. R. Evid. 402 because the probative value, if any, is far outweighed by its prejudicial effect. Fed. R. Evid.. 403; See Trevino v. Gates, 99 F.3d 911, 922 (9th Cir. 1996).

Accordingly, Exhibit “T” is irrelevant, immaterial, and should not be considered by the Court. Fed. R. Evid. 401, 402; See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)(document is material only if it creates a fact dispute that could affect the outcome under applicable governing law). Furthermore, Angeles objects to SSD’s attempt to “incorporate the arguments made by McKesson in support of its Motion for Protective Order¹, as it is hearsay, irrelevant, improper argument and opinion, lacks foundation of personal knowledge, speculative, misleading, argumentative, mischaracterizes the evidence and/or assume facts not in evidence. Fed. R. Evid. 402, 403, 602, 701, 803, 901.

2. Declaration of Maureen Bennett

a. Lacks Foundation of Personal Knowledge and Lacks Proper Authentication.

Ms. Bennett’s Declaration lacks foundation of personal knowledge and lacks proper authentication. The requirement that evidence be authenticated is satisfied “by evidence sufficient to support a finding that the matter in question is what its proponent claims.” Federal

1 Rule of Evidence 901(a). Ms. Bennett does not establish that she has the necessary personal
 2 knowledge or competency to testify to the facts contained therein, her declaration is speculative at
 3 best. Fed. R. Evid. 602.

4 b. Impermissibly Vague and Misleading

5 Ms. Bennett's Declaration also contains statements that are impermissibly vague and
 6 misleading. For example, paragraph 3 states that "Item 12 is another compilation of documents."
 7 This is vague and ambiguous as to "compilation," and does not assist the Court in any way. It
 8 should be stricken. Also, paragraph 4 is vague and ambiguous. Ms. Bennett states that SSD
 9 Privilege Log items 16 and 17 "*appear* to be a draft and another version of a list that Ms. Leonard
 10 prepared of some or all of the files selected for review as part of the work performed for Univar in
 11 2002." Bennett Declaration, ¶ 4. This statement is vague and ambiguous as to "another version
 12 of a list," and "the work performed for Univar." Ms. Bennett does not describe in any way what
 13 "work performed for Univar" means. Ms. Bennett cannot claim with certainty the identity of
 14 items 16 and 17 and cannot claim with certainty the identity of any documents listed on the
 15 Privilege Logs. This declaration is speculative, and does not assist the Court in any way. Fed. R.
 16 Evid. 401, 402. Accordingly, paragraphs 3-6 should be stricken and not given any weight. Alpha
 17 Energy Savers inc. v. Hansen, 381 F.3d 917, 921 n.1 (9th Cir. 2004)(portions of affidavit as to
 18 which defendants moved to strike were not considered by the Ninth Circuit).

19 3. Declaration of Nicholas Unkovic

20 a. Lacks Foundation of Personal Knowledge and Lacks Proper Authentication.

21 Mr. Unkovic's Declaration lacks foundation of personal knowledge. Mr. Unkovic did not
 22 establish the competency to testify to the facts contained therein. The requirement that
 23 evidence be authenticated is satisfied "by evidence sufficient to support a finding that the matter
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28 ¹ 06-80343 Docket No. 10-17, 38
 Plaintiff Angeles' Evidentiary Objections to SSD's

1 in question is what its proponent claims." Federal Rule of Evidence 901(a) has not been met. As
2 with Ms. Bennet's declaration, Mr. Unkovic does not provide any foundation and does not
3 establish the necessary personal knowledge—other than that the privilege logs were prepared
4 under his "general direction"—and the statements contained in his declaration are speculative at
5 best. Mr. Unkovic expressly admits that he did not have substantial responsibility in preparing
6 these summaries. Unkovic Declaration, ¶ 2. Mr. Unkovic states that other individuals (Francis
7 Toldi and Jennifer Hernandez) had "substantial responsibility for preparation of the
8 Environmental and Non-Environmental Summaries. Id. His declaration should therefore be
9 stricken or disregarded as he lacks personal knowledge and the competency to testify regarding
10 the summaries. Alpha Energy Savers inc. v. Hansen, 381 F.3d 917, 921 n.1 (9th Cir.
11 2004)(portions of affidavit as to which defendants moved to strike were not considered by the
12 Ninth Circuit).

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15 b. Improper Argument, Contains Legal Conclusion

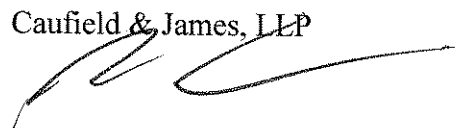
16 Mr. Unkovic's Declaration also contains statements that are improper argument and are
17 legal conclusion, not evidence. For example, paragraph 7 states that SSD privilege log items 2,
18 41, 48 were "made in the course of the attorney-client relationship." Unkovic Declaration, ¶ 7.
19 Yet Mr. Unkovic provides no factual support for this statement. This statement is also vague and
20 ambiguous as to what the circumstances of "made in the attorney-client relationship" fall under.
21 Accordingly, paragraphs 7 should be stricken and not given any weight.
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1 Conclusion

2 Angeles respectfully requests that the Court exclude from evidence or strike the exhibits
3 and declarations objected to above.

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6 DATED: May 28, 2007

Caufield & James, LLP

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9 Jeffery L. Caufield, Esq.
10 Attorneys for Plaintiff/Counter-Defendant
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